

1 David Bush, State Bar No. 154511  
Jennifer Henry, State Bar No. 208221  
2 BUSH & HENRY  
ATTORNEYS AT LAW  
3 4400 Keller Avenue, Suite 200  
Oakland, CA 94605  
4 Tel: (510) 577-0747

5 Clifford A. Chanler, State Bar No. 135534  
CHANLER LAW GROUP  
6 Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801  
7 Tel: (203) 966-9911

8 Attorneys for Plaintiff  
MICHAEL DIPIRRO  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA  
12

13 MICHAEL DIPIRRO, ) No. H215621-9  
14 Plaintiff, )  
15 v. )  
16 CALIFORNIA PLASTIC PRODUCTS, ) CONSENT JUDGMENT  
INC.; and DOES 1 through 1000, )  
17 Defendants. )  
18 \_\_\_\_\_ )

19  
20  
21 This Consent Judgment is entered into by and between  
22 Michael DiPirro, a California citizen, and California Plastic  
23 Products, Inc., a Delaware corporation, as of February 26,  
24 2001 (the "Effective Date"). The parties agree to the  
25 following terms and conditions, as outlined in the following  
26 Settlement Agreement:

27 ///

28 ///

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and California Plastic Products, Inc., a Delaware corporation ("CPP"), as of February 26, 2001 (the "Effective Date"). Michael DiPirro and CPP are collectively referred to herein at times as the "Parties" to this Agreement.

### RECITALS

#### WHEREAS:

A. Michael DiPirro is an individual residing in San Francisco, California, who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products;

B. CPP is a company that currently distributes certain plant support products as set forth in Exhibit A that contain lead (or lead compounds) and/or toluene, substances known to the State of California to cause cancer and birth defects (or other reproductive harm);

C. A list of the plant support products which contain lead (or lead compounds) and/or toluene (the "Listed Chemicals") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been distributed and sold by CPP for use in California since at least July 12, 1996;

D. On July 12, 2000, Michael DiPirro first served CPP and public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided CPP and such public enforcers with notice that CPP was allegedly in violation of Health & Safety Code § 25249.6 for allegedly failing to warn purchasers that certain products it sells in California allegedly expose users to lead (or lead compounds) and/or toluene;

E. Since receipt of the "60-Day Notice of Violation" CPP has discontinued distribution of the "Sturdy Vine Nails" plant supports product. CCP has not resumed sales of the "Sturdy Vine Nails" product;

F. On September 21, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. California Plastic Products, Inc., et al. No. H215621, in the Alameda County Superior Court, naming CPP as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to lead (or lead compounds) and/or toluene contained in certain plant support products;

G. On September 21, 2000, Michael DiPirro also filed complaints entitled Michael DiPirro v. Yardbirds Electric and Plumbing Supply, et al., No. H215623-7, Michael DiPirro v. Home Depot, et al., No. H215617, and Michael DiPirro v. Food-4-Less, et al., No. H217704-3 in Alameda County Superior Court, alleging violations of Business & Professions Code §17200 and Health and Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to lead (or lead compounds) and/or toluene contained in certain plant support products distributed by CPP; and

H. Nothing in this Agreement shall be construed as an admission by CPP of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by CPP of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of CPP under this Agreement.

## AGREEMENT

**NOW, THEREFORE, MICHAEL DIPIRRO AND CPP AGREE THAT THE FOREGOING RECITALS ARE TRUE AND CORRECT, AND FURTHER AGREE AS FOLLOWS:**

1. **Product Warnings.** CPP shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in sections 1.1 and 1.2 below. Beginning on February 26, 2001, CPP agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemicals (where the amount of the Listed Chemical in the Product by weight exceeds the “no significant risk level” established by Proposition 65) for sale in the State of California unless such Products comply with sections 1.1 and/or 1.2 (as applicable) below:

1.1 Except as set forth herein, for all Products listed on Exhibit A containing lead, such Products shall bear the following warning statement:

**“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”**

1.2 Except as set forth herein, for all Products listed on Exhibit A containing toluene, such Products shall bear the following warning statement:

**“WARNING: This product contains toluene, a chemical known to the State of California to cause birth defects (or other reproductive harm)”**

The warning statement shall be prominently placed on or near the Products at the point of sale with such conspicuousness, as compared with other words, statements, designs or devices in proximity of the location of the Products or the store shelf or on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase.

CPP packages and distributes a glue product called “Sturdy Glue for Vine Supports” with its products called “Gray Vine Guides,” “Red Brick Vine Guides” and “White Vine Guides.” CPP will also package and distribute this same glue product with its product called “Sturdy Vine Supports” and may package and distribute this same glue product with other products. CPP asserts that the presence of toluene in the glue product is less than .1% by weight. As such, it is expressly understood and agreed that CPP is not required to provide a health hazard warning with these products pursuant to Proposition 65.

2. **Payment Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), CPP shall pay a civil penalty of \$15,000.00. The penalty payment(s) are to be made payable to “Chanler Law Group In Trust For Michael DiPirro.” Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75 % of these funds remitted to the State of California’s Department of Toxic Substances Control.

**3. Reimbursement of Fees and Costs.** The Parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. CPP then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties reached an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

CPP shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to CPP's attention, litigating and negotiating a settlement in the public interest. CPP shall pay the total sum of \$49,000.00 for investigation fees, attorneys' fees and litigation costs (the "Fees and Costs Payment"). CPP agrees to make the Fees and Costs Payment within ten (10) days after the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group."

**4. Michael DiPirro's Release of CPP.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against CPP, and its past, present and future parents, subsidiaries, divisions, affiliates, successors, predecessors and assigns, and its distributors, retailers, customers, directors, officers, and employees, whether under Proposition 65 or Business & Professions Code § 17200 *et seq.*, based on CPP's alleged failure to warn about exposure to the Listed Chemicals contained in any of the Products. The Parties hereto intend that this Agreement be effective as a full and final accord, satisfaction and release as to CPP and its past, present and future parents, subsidiaries, divisions, affiliates, successors, predecessors and assigns, and its distributors, retailers, customers, directors, officers and employees of and from any and all matters released hereunder. The Parties hereto further intend that this Agreement be effective as a full and final accord, satisfaction and release as to Yardbirds Electric and Plumbing Supply, Home Depot, Food-4-Less, and other businesses who may have marketed the Products, and their past, present and future parents, subsidiaries, divisions, affiliates, successors, predecessors and assigns, and their distributors, retailers, customers, directors, officers, and employees for the claims released in this paragraph.

**5. CPP's Release of Michael DiPirro.** CPP, by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Professions Code §17200 *et seq.*, against CPP.

**6. No Admission.** The Parties are entering into this Settlement Agreement, and will execute and file a Stipulated Judgment as provided below, for the purpose of avoiding the time, expense and uncertainty of litigation. Nothing in this Settlement Agreement shall be construed as, and the Parties expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by any Party of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Settlement Agreement.

**7. Dismissal With Prejudice of Actions Against Yardbirds, Home Depot and Food-4-Less.** The Parties agree that upon entry of the consent judgment in this action, Plaintiff will cause to be filed with the court a request for dismissal with prejudice in each of the actions pending against Yardbirds in Case No. H215623-7, Home Depot in Case No. H215617 and Food-4-Less in Case No. H217704-3 and any other action pending against any party that may have distributed the Products.

**8. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and CPP shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void.

**9. CPP Sales Data.** CPP understands that the sales data provided to counsel for DiPirro by CPP was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code § 25249.7(b) in this Agreement. To the best of CPP's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of CPP's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against CPP, provided that all sums paid by CPP pursuant to paragraphs 2 and 3 are returned to CPP within ten (10) days from the date on which DiPirro notifies CPP of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies CPP that he is rescinding this Agreement pursuant to this Paragraph.

**10. Product Characterization.** CPP acknowledges that it has been informed that each of the Products listed in Exhibit A contains lead and/or toluene and that Plaintiff alleges that the customary use or application of the Products is likely to expose users to lead and/or toluene, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that CPP obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c), and CPP decides to resume sales of the Products without the warnings and/or eliminate the warnings from the Products it is selling, then CPP shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of CPP's Exposure Data, DiPirro shall provide CPP with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide CPP written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of CPP's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and CPP shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies CPP of his intent to challenge the Exposure Data, (a) CPP may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations, or (b) DiPirro and CPP shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of CPP's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and CPP agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.

Notwithstanding any of the foregoing, and as more fully set forth in section 1 above, it is expressly understood and agreed that CPP is not required to provide a health hazard warning with its glue product called "Sturdy Glue for Vine Supports" which is packaged and distributed with its products called "Gray Vine Guides," "Red Brick Vine Guides," "White Vine Guides" and "Sturdy Vine Supports" or with any

other products which contain the same glue, so long as the percentage of toluene in the product is equal to or less than .1% by weight.

**11. Modification of Law.** In the event the applicable warning requirements under Proposition 65 are subsequently amended or changed by statute, regulation, case law or court order so as to materially affect the warning obligations imposed on CPP pursuant to sections 1.1 and 1.2 above, CPP shall modify the warnings provided herein to the extent provided by the new law, regulation, case law or court order.

**12. Severability.** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**13. Attorney's Fees.** In the event of an action to enforce the provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

**14. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

**15. Notices.** All correspondence to Michael DiPirro shall be mailed to.

David Bush, Esq.  
Bush & Henry  
4400 Keller Avenue, Suite 200  
Oakland, CA 94605-4229  
(510) 577-0787

or

Clifford A. Chanler, Esq.  
Chanler Law Group  
Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801  
(203) 966-9911

All correspondence to CPP shall be mailed to:

Thomas H. Cadden, Esq.  
Cadden, Fuller, Burkhalter & Michaels LLP  
2030 Main Street, Suite 1500  
Irvine, CA 92614  
(949) 263-2275

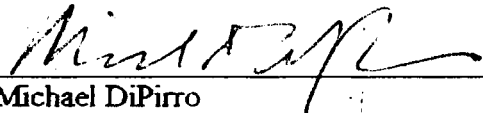
**16. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. DiPirro represents, however, that his counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

17. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

18. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

**AGREED TO:**

**MICHAEL DIPIRRO**

By:   
Michael DiPirro

**AGREED TO:**

**CALIFORNIA PLASTIC  
PRODUCTS, INC.**

By: \_\_\_\_\_  
Gerald Moss  
President

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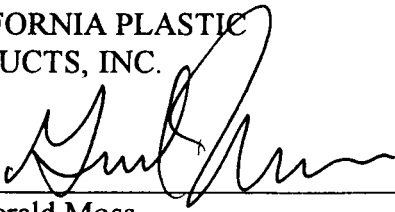
**AGREED TO:**

MICHAEL DIPIRRO

By: \_\_\_\_\_  
Michael DiPirro

**AGREED TO:**


CALIFORNIA PLASTIC  
PRODUCTS, INC.

By:  \_\_\_\_\_  
Gerald Moss  
President



APPROVED AS TO FORM:

Dated: March 6, 2001

by:   
David R. Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

Dated: MAR 7, 2001

by: Geoffrey Crisp  
Geoffrey Crisp  
Attorneys for Defendant  
California Plastic Products,  
Inc.

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# **Exhibit A**

## EXHIBIT A

Sturdy Vine Nails

Sturdy Vine Supports with Sturdy Glue for Vine Supports

Red Brick Vine Guides with Sturdy Glue for Vine Supports

White Vine Guides with Sturdy Glue for Vine Supports

Gray Vine Guides with Sturdy Glue for Vine Supports